JUDGE SCHEINDLIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11 CV 2112

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WILLIAM TEJADA,

Case No.______________

Plaintiff,

-vs.-

COMPLAINT

OTTOMANELLI'S CAFE FRANCHISING CORP. d/b/a OTTOMANELLI BROTHERS NY GRILL, NICOLO OTTOMANELLI and JOSEPH OTTOMANELLI,

Defendants.

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COMPLETED

Plaintiff, WILLIAM TEJADA, by and through his attorneys, LAW OFFICES OF WILLIAM CAFARO, complaining of the Defendants, hereby alleges as follows upon information and belief:

THE PARTIES

1. The plaintiff WILLIAM TEJADA (hereinafter "Tejada") is an individual residing in New York, New York.

2. Upon information and belief, the defendant OTTOMANELLI'S CAFE FRANCHISING CORP., (hereinafter "OTTOMANELLI'S CAFE") was and is a domestic business corporation.

3. Upon information and belief, the defendant OTTOMANELLI'S CAFE, at all times herein pertinent, operated a restaurant under the name and style Ottomanelli Brothers NY Grill.

4. Upon information and belief, defendant Ottomanelli's Cafe has its principal place of business at 1424 Lexington Avenue, New York, NY 10128.

5. Upon information and belief, the Defendant NICOLO OTTOMANELLI (hereinafter "Nicolo") is an individual whose business address is 1424 Lexington, Avenue, New York, NY 10128.

6. Upon information and belief, and at all times herein pertinent, the Defendant Nicolo served as a principal, officer and/or manager of the defendant Ottomanelli's Cafe.

7. Upon information and belief, the Defendant JOSEPH OTTOMANELLI (hereinafter "Joseph") is an individual whose business address is 1424 Lexington, Avenue, New York, NY 10128.

8. Upon information and belief, and at all times herein pertinent, the Defendant Joseph served as a principal, officer and/or manager of the defendant Ottomanelli's Cafe.

JURISDICTION AND VENUE

9. Jurisdiction is based upon 28 U.S.C. § 1331, insofar as it involves a statute of the United States, specifically, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq.., and plaintiffs relies upon 28 U.S.C. § 1367 to invoke Supplemental Jurisdiction with respect to the state law claims which form another basis for recovery upon the same factual nexus, specifically Articles 6 & 19 of the Labor Law and 12 NYCRR § 142-2.2.

10. Venue is based upon 28 U.S.C. § 1391(b)(1), insofar as at least one of the defendants reside within this Judicial District, and (b)(2), insofar as a substantial part of the events giving rise to the within causes of action occurred in this Judicial District.

FACTUAL ALLEGATIONS

11. At all times herein pertinent, defendants were engaged in an industry having an effect on commerce within the meaning of 29 U.S.C. § 203.

12. At all times herein pertinent, plaintiff regularly handled products which had been moved in commerce in the course of his duties,

13. The defendants and each of them, operate a restaurant.

14. Plaintiff was hired by the defendants in or about the year September 27, 2004 and worked for said defendants until November 24, 2010.

15. Plaintiff was hired as a cook and was assigned various duties including but not limited to inventory, food preparation, and maintenance.

16. Plaintiff was employed by the defendants and was subject to two variations in scheduling from approximately September 27, 2004 up to approximately December 31, 2007 plaintiff worked 6 days per week from Monday through Saturday, inclusive, from 10:30am to 10:30pm with Sundays off; and from approximately January 1, 2008 up to November 24, 2010 plaintiffs worked 5 days per week from Tuesday to Saturday, inclusive, from 10:30am to 10:30pm with Mondays and Sundays off.

17. Plaintiff was subject to a pay rate of $13.00 per hour for all hours worked.

18. The plaintiff regularly worked for the defendants in excess of the forty (40) hour work week, without any lunch break. However, plaintiff never received any premium overtime pay for work performed in excess of the forty hour work week.

19. At all times herein pertinent, the plaintiff performed his duties for the defendant Ottomanelli's Cafe at the direction and under the control of the defendants Nicolo and Joseph.

20. At all times herein pertinent, the defendants Nicolo and Joseph issued plaintiff his pay.

21. At all times herein pertinent, with respect to the employees of Ottomanelli's Cafe, and more specifically the plaintiff herein, the defendants Nicolo and Joseph supervised employees, made decisions as to hiring and firing and as to wages.

22. At all times herein pertinent, the defendants Nicolo and Joseph acted as plaintiffs' employer within the meaning of FLSA and New York State's Labor Law.

AS AND FOR A FIRST CAUSE OF ACTION
FEDERAL FAIR LABOR STANDARDS ACT
AGAINST THE DEFENDANTS, AND EACH OF THEM
(OVERTIME)

23. The plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

24. All of the foregoing constituted willful and repeated violations of the Fair Labor Standards Act, so the applicable statute of limitations is three years pursuant to 29 U.S.C. § 255(a).

25. The defendants herein knowingly and willfully violated 29 U.S.C. § 207 by failing to pay plaintiffs' overtime pay at premium rate of one and one half times plaintiffs' regular rate of pay.

AS AND FOR A SECOND CAUSE OF ACTION
STATE WAGE AND HOUR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(OVERTIME)

26. The plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

27. The defendants herein knowingly, and in bad faith, violated Articles 6 & 19 of the New York State Labor Law and 12 NYCRR §142-2.2 by failing to pay plaintiffs' overtime pay at premium rate of one and one half times plaintiff's regular rate of pay.

AS AND FOR A THIRD CAUSE OF ACTION
STATE WAGE AND HOUR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(SPREAD OF HOURS)

28. The plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

29. The defendants knowingly and in bad faith violated 12 NYCRR § 142-2.4 in failing to pay the plaintiff an additional hour's pay at minimum wage for his spread of hours.

WHEREFORE, plaintiff prays for judgment as against the defendants, and each of them, as follows:

(a) Awarding back pay for overtime pay due and owing to the plaintiff;

(b) Awarding back pay for spread of hours pay due and owing to the plaintiff;

(c) Awarding liquidated damages pursuant to 29 U.S.C. § 216(b) and/or New York State's Labor Law, Articles 6 & 19, §§ 198(1-a), 663(1);

(d) Awarding the costs and disbursements of this action, along with reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) and/or New York State's Labor Law, Articles 6 & 19, §§ 198(1-a), 663(1);

(e) Awarding any other relief this Court deems just, proper and equitable.

Dated: March 24, 2011
New York, New York

Respectfully submitted,
LAW OFFICES OF WILLIAM CAFARO

William Cafaro (WC2730)
Attorneys for Plaintiff
19 West 44th Street, Ste. 1500
New York, New York 10036
(212) 583-7400
File No. 52608

To:

OTTOMANELLI'S CAFE FRANCHISING CORP.
d/b/a OTTOMANELLI BROTHERS NY GRILL
1424 Lexington Avenue
New York, NY 10128

NICOLO OTTOMANELLI
1424 Lexington Avenue
New York, NY 10128

JOSEPH OTTOMANELLI
1424 Lexington Avenue
New York, NY 10128

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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Defendants.
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COMPLAINT

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